

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2011-387-C - ORDER NO. 2012-30  
JANUARY 12, 2012

IN RE: Joint Application of DSLnet	) ORDER GRANTING
Communications, LLC and DIECA	) EXPEDITED REVIEW
Communications, Incorporated d/b/a Covad	) AND APPROVING PRO
Communications Company for Approval of	) FORMA INTRA-
Pro Forma Intra-Corporate Transactions	) CORPORATE
	) TRANSACTIONS

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the joint motion by DSLnet Communications, LLC (“DSLnet”) and DIECA Communications, Inc. d/b/a Covad Communications Company (“DIECA” and together with DSLnet, the “Applicants”) pursuant to 26 S.C. Code Regs. 103-829 and other applicable rules of practice and procedure of the Commission for expedited review of the Joint Application for authority to complete intra-corporate transactions. Having reviewed the Joint Application and supporting verified testimony, the Commission grants the relief requested and approves the subject transactions without holding a formal hearing.

The proposed transaction is an internal *pro forma* reorganization resulting in the merger of DSLnet and other unregulated affiliates into DIECA in order to streamline operations under a single “MegaPath” branded company. The customers and assets to support the provision of services to the customers will be transferred into DIECA, which will become the service provider for those customers.

The Applicants are certificated to provide service in South Carolina. DSLnet is authorized to provide local and long distance telecommunications services pursuant to Order No. 1999-365 issued by the Commission in Docket No. 1999-081-C. DIECA is authorized to provide local exchange and interexchange services pursuant to Order No. 2000-0513 issued by the Commission in Docket No. 2000-0133-C. After the transaction is completed DSLnet's customers will continue to receive the same high quality service, at the same rates, and under the same terms and conditions.

The Applicants published Notice of the Filing of the Application in area newspapers, as required by the Commission. The deadline for filing petitions to intervene in the proceeding was October 28, 2011.

The Office of Regulatory Staff does not oppose the Joint Application and does not object to this motion. No other comments or petitions to intervene have been filed.

The Applicants filed the verified testimony of Mr. Douglas Carlen on October 19, 2011, in support of the Joint Application. Mr. Carlen's testimony further describes the proposed transaction and asset transfer and its negligible effect on the Applicants' South Carolina customers.

The Applicants filed their Application pursuant to S.C. Code Ann. § 58-9-310. Section 58-9-310 provides that "no telephone utility, without the approval of the Commission after due hearing and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, transfer, lease, consolidate or merge its property, powers, franchises, or privileges or any of them...." S.C. Code Ann. § 58-9-

310 (Supp. 2011). Notice has been published as required by the Commission and any interested party, including the Applicants, has thus had an *opportunity* for a hearing.

The Applicants sought expedited review of its application on the grounds that (1) the South Carolina Administrative Procedures Act ("APA") grants the Commission flexibility regarding hearings in contested matters, (2) due process requirements are satisfied if the Applicants waive the right to a hearing when there is no disputed material issue of fact, and (3) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection required under the APA.

The APA provides that "in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days." S.C. Code Ann. § 1-23-320(a) (Supp. 2011). The APA defines "contested case" as "a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(2) (Supp. 2011).

The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2011). In this case, the requirements of notice and an opportunity for a hearing have been satisfied, and there has been no objection by the Office of Regulatory Staff or by any member of the public to the motion. No intervenors

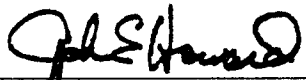
have made appearances in this docket. Accordingly, the Commission may appropriately dispense with the hearing, as there is no genuine issue as to a material issue of fact.

Having reviewed the application, the supporting verified testimony, and the motion for expedited review; the Commission grants expedited review, waives the formal evidentiary hearing, and approves the intra-corporate transactions described in the application.

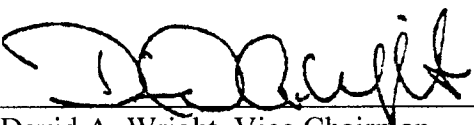
Pursuant to the Commission's approval of the Joint Application, DSLnet will merge into DIECA, and the MegaPath Group (comprised of MegaPath, Inc., Covad Communications Company, and DSLnet Communications VA, Inc.) will merge into DIECA with DIECA surviving. DIECA will acquire the assets of all of the merging entities, including their respective customer bases and substantially all of their assets used in the provision of telecommunications services. Upon consummation of the proposed transactions, DSLnet will surrender its Certificate of Public Convenience and Necessity. As a result of the proposed transactions, DIECA will replace DSLnet as the service provider in South Carolina.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
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John E. Howard, Chairman

ATTEST:

  
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David A. Wright, Vice Chairman  
(SEAL)